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TO: Caltrans

DATE: August 16, 2016

COMPANY: Caltrans

FAX: (916) 227-6282

FROM: Joe Richardson

NUMBER OF PAGES (INCL. COVER SHEET): 9

COMMENTS:

BID PROTEST – 08-OR1304

Please find a bid protest regarding the following project. If there are any issues please contact me at (760) 391-6247. Thank you.

Contract: 08-OR1304
Contractor: Granite Construction Company
Bid Date: 7/27/2016
Bid Time: 2:00 p.m.

From Facsimile Number (760) 775-8229. If you have any problems with this transmission, please contact sender at (760) 391-6247.

GRANITE™

August 16, 2016

Department of Transportation
Division of Engineering Services
Office Engineer MS 43
1727 30th Street
P.O. Box 168041
Sacramento, Ca. 95816-8041

Via Facsimile (916) 227-6151

Re: Construction on State Highway in San Bernardino County in Joshua Tree and
Near Twenty Nine Palms at Various Locations From 0.1 Mile East of Sherwood
Road to 0.1 Mile East of Lee Drive
Contract Number 08-0R1304 (the "Contract")

Subject: **Bid Protest**
Bid Opening Date: July 27, 2016
Location 08-SBD-62-16.7/25.2

This serves as a formal protest of the bids submitted by Matich Corporation, Inc. ("Matich") and Sully-Miller Contracting Company ("Sully-Miller") on the above-referenced Contract, as their respective bids listed a subcontractor that was not registered with the State of California Department of Industrial Relations (DIR) at the time of bid, which as explained herein is sufficient grounds for finding both bids nonresponsive.

Granite Construction Company ("Granite") timely submitted a bid to the California Department of Transportation ("Caltrans") for the above-referenced Contract on July 27, 2016. Matich was the apparent low bidder, Sully-Miller was the second low bidder, and Granite was the third low bidder.

In its bid, Matich listed "Lexis Fence" of Ridgecrest, California, along with License Number 923859; Sully-Miller listed, "Alexis Fence" of Ridgecrest, California, along with the same License Number, 923859. Despite Alexis Fence submitting a bid to Granite that was \$99,918 lower than the competition, Granite did not list Alexis Fence. This was because after performing a prudent pre-bid investigation, including a Public Works Contractor ("PWC") Registration Search on the CA.Gov website, Granite learned that Alexis Fence was not registered with the DIR at bid time, July 27, 2016.¹ Granite further learned that License Number 923859 was that of Luis Parra Construction of Tulare, California, which advertised itself as a home security contractor. Accordingly and in order to strictly comply with the bid requirements, Granite listed Crown Fence Company² who, despite a substantially higher bid, was properly registered as a PWC with the DIR. By failing to strictly comply with the Notice to Bidders,

¹ Since bid time and on August 4, 2016, Luis Parra Construction DBA Alexis Fence registered with the Department of Industrial Relations. See <https://efiling.dir.ca.gov/PWCR/Search>. Luis Parra Construction also appears to have created or updated the webpage at alexisfence.com on or around August 3, 2016 to include its new Department of Industrial Relations Registration Number.

² DIR Registration Number: 1000005330 (Registration Date: 17-Jun-2016).

Granite Construction Company
Attn: Department of Transportation, Office Engineer
August 16, 2016

Matich and Sully-Miller clearly had a competitive advantage over the other bidders, including Granite that complied with the bid's registration requirements.

As explained more fully below, both Matich's and Sully-Miller's bids are nonresponsive because their respective bids listed a subcontractor, Alexis (or Lexis) Fence, purportedly a California-based company, which was not a registered PWC at the time of bid submission, a requirement clearly expressed in the Notice to Bidders. Furthermore, both Matich's and Sully-Miller's bids included a California State License Board ("CSLB") number belonging to another California contractor, Luis Parra Construction that also was not PWC-registered.

For these reasons, Granite requests that Caltrans find both Matich's and Sully-Miller's bids to be nonresponsive, reject their bids, and award the Contract to Granite as the lowest responsive and responsible bid.

**The Notice to Bidders Clearly Required that Listed
Subcontractors Must be Registered with the DIR**

Sub-section 2-1.10 of the Notice to Bidders required the bidding contractor list each subcontractor that would perform work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever was greater (Pub Cont Code § 4100 et seq.) Accordingly, Matich and Sully-Miller were each required to list their fencing subcontractor, Alexis/Lexis Fence, as the submitted bid exceeded one-half of one percent of their respective total bid or \$10,000. In addition, for each subcontractor listed, Sub-section 2-1.10 required the bidding contractor show, amongst other things, its PWC registration number.

Sub-section 3-1.03 provided, "[n]o...subcontractor may be awarded a contract for public work on a public works project...unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5."³ Furthermore, Sub-section 5-1.13A provided, "[e]ach subcontractor must have an active and valid: State contractor license...[and] Public works contractor registration number with the Department of Industrial Relations." Moreover, **Sub-section 2-1.04 of the Contract's Notice to Bidders mandated that no subcontractor be listed on the bidding contractor's bid proposal, unless registered with the DIR.** Sub-section 2-1.04, in its entirety, is shown below:

2-1.04 CONTRACTOR REGISTRATION

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

³ Ca. Labor Code 1725.5 ("A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1...")

Granite Construction Company
Attn: Department of Transportation, Office Engineer
August 16, 2016

Clearly, current PWC registration with the DIR was required not only at contract formation and during construction, but also at bid time and time of award. Matich's and Sully-Miller's bids failed to comply with this requirement, and must be rejected.

Both Matich's and Sully-Miller's Bids were Non-Responsive

To be responsive, a bid must be in strict and full accordance with the material terms of the Notice to Bidders. "A basic rule of competitive bidding is that bids must conform to the specifications, and that if a bid does not so conform, it may not be accepted." *Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897, 904, quotation omitted; see *Great West Contractors, Inc. v. Irvine Unified School Dist.* (2010) 187 Cal. App. 4th 1425, 1456 (which recognized, "literal noncompliance with a bid request...makes a bid nonresponsive."); see also *Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal. App.3d 1331, 1341 (citation omitted) ("bid is only responsive, if it promises to do what the bidding instructions demand.")

Listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal is generally grounds for filing a bid protest and a determination that the bid is nonresponsive, with a few exceptions; none of which apply here. These exceptions are listed in Section 1771.1(c) of California's Labor Code, which in relevant part, follows:

An inadvertent error in listing a subcontractor is who is not registered pursuant to Section 1725.5 in bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

- (1) *The subcontractor is registered prior to the bid opening.*
- (2) *Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee...*
- (3) *The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.*

Whether deliberate or inadvertent, both Matich and Sully-Miller listed a subcontractor that was not registered with the DIR, and because none the Section 1771.1 (c) exceptions apply, the listing of Alexis/Lexis Fence was nonresponsive. Relying on information obtained from DIR's website, Luis Parra Construction registered and listed the trade name of "Alexis Fence" on August 4, 2016. Clearly, Luis Parra Construction DBA Alexis Fence was not a registered PWC prior to July 27, 2016, and did not register with the DIR within 24 hours after bid opening, but over one week later. The following image was obtained from DIR's website, <https://efiling.dir.ca.gov/PWCR/Search>.

1000037562 Contractor Details			
Contractor Information	Legal Liability Information	Workers' Compensation	
Sole Proprietor name LUIS PARRA			
Details Legal Name View LUIS PARRA CONSTRUCTION	Registration Number 1000037562	County KERN	City RIDGECREST
			Registration Date 08/04/2016
			Expiration Date 06/30/2017

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101 EAST COSO AVE #282 RIDGECREST, CA 93555
CA LIC 923859, DIR 1000037562, UNION CONTRACTOR, DBE & SBE PENDING

PH: (760) 428-8830
Cell

E Mail: clay@Alexisfence.com FAX: (844) 335-7776
JOB ESTIMATE

TO:
Address:
Phone:

BID DATE
7/27/2016 JOB DESCRIPTION
08-0R1304

San Bernardino County In Joshua Tree And Near
Twenty Nine Palms

ITEM #	DESCRIPTION	QTY'S	UNIT	ITEM
18	Contractor-Supplied Biologist (DAY) (Includes Training, Fields Study, Reports)	25	\$ 1,500.00	\$ 37,500.00
19	Remove Guardrail	76	\$ 25.00	\$ 1,900.00
45	TEMPORARY FENCE (TYPE DESERT TORTOISE) (Quote Based on installing 3000' Per Day)	44,650	\$ 3.03	\$ 135,289.50

EXCLUSIONS:

Grading, Staking, Clearing of the fence line
Removal and disposing of concrete footers
Umbrella and Rail Road Insurance, Installation
Engineering and Layouts
Post pockets
Asphalt repairs
Lighting
Traffic control
Vegetation Control
Minor Concrete (Structure)
Mandatory classes (Drug testing, Permits)
WPCP, SWWPP
Locating/Relocating of utilities
Unmarked Underground

DOLLARS (\$) \$ 174,689.50

ITEMS 19/45 \$137,189.50

NOTES:

We Require 14' +/- Space for our equipment

BONDING NONE

TOTAL

MOBILIZATIONS (TOTAL) \$ 2,550.00
This bid is based on (EA)
ESTIMATED BY
Clay Hoggard

CONDITIONS OF BID PROPOSAL

08-0R1304

San Bernardino County In Joshua Tree And Near Twenty Nine Palms

Acceptance of this proposal by Contractor shall be acceptance of all terms and conditions recited herein which shall supersede any conflicting term in any other contract document. Any of the Contractor's terms and conditions in addition or different from this proposal are objected to and shall have no effect. Contractor's agreement herewith shall be evidenced by Contractor's signature hereon or by permitting Subcontractor to commence work for project.

1. Subcontractor shall be paid monthly progress payments on or before the 15th of each month for the value of work completed plus the amount of materials and equipment suitably stored on or off site. Final payment shall be due 30 days after the work described in the Proposal is substantially completed. No provision of this agreement shall serve to void the Subcontractor's entitlement to payment for properly performed work or suitably stored materials or to require the Subcontractor to continue performance if timely payments are not made to Subcontractor for suitably performed work or stored materials or to void Subcontractor's right to file a lien or claim on its behalf in the event that any payment to Subcontractor is not timely made. **NO RETENTION WILL BE HELD ON MATERIALS ON HAND**

2. The Contractor will withhold no more retention from the Subcontractor other than is being withheld by the Owner from the Contractor with respect to the Subcontractor's work.

3. All sums not paid when due shall bear an interest rate of 1 1/4% per month or the maximum legal rate permitted by law whichever is less; and all costs of collection, including a reasonable attorney's fee, shall be paid by Contractor.

4. No backcharges or claim of the Contractor for services shall be valid except by an agreement in writing by the Subcontractor before the work is executed, except in the case of the Subcontractor's failure to meet any requirement of the subcontract agreement. In such event, the Contractor shall notify the Subcontractor of such default, in writing, and allow the Subcontractor reasonable time to correct any deficiency before incurring any cost chargeable to the Subcontractor.

5. Contractor is to prepare all work areas so as to be acceptable for Subcontractor work under the Subcontract. Subcontractor will not be called upon to start work until sufficient areas are ready to insure continued work. The Contractor shall furnish all temporary site facilities including suitable storage space, hoisting, temporary electrical and water at no cost to Subcontractor.

6. Subcontractor shall be given a reasonable time in which to make delivery of materials and/or labor to commence and complete the performance of the contract. Subcontractor shall not be responsible for delays or defaults where occasioned by any causes of any kind and extend beyond its control, including but not limited to: delays caused by the owner, general contractor, architect and/or engineers, delays in transportation, shortage of raw materials, civil disorders, labor difficulties, vendor allocations, fires, floods, accidents and acts of God. Subcontractor shall be entitled to equitable adjustment in the subcontract amount for additional costs due to unanticipated project delays or accelerations caused by others whose acts are not the Subcontractor's responsibility and to time extensions for unavoidable delays. The Contractor shall make no demand for liquidated damages for delays in excess of the amount specified in the subcontract agreement and no liquidated damages may be assessed against Subcontractor for more than the amount paid by the Contractor for unexcused delays to the extent actually caused by Subcontractor.

7. The Subcontractor's equipment and work are guaranteed for a period of one year from the date of substantial completion or use by the Contractor or the Contractor's customer, whichever is earlier. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The exclusive remedy shall be that Subcontractor will replace or repair any part of its work which is found to be defective. Subcontractor shall not be responsible for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation or normal wear, tear and usage.

8. Work called for herein is to be performed during Subcontractor's regular working hours. All work performed outside of such hours shall be charged for at rates or amounts agreed upon by the parties at the time overtime is authorized.

9. Contractor shall, if the Owner does not, purchase and maintain all risk insurance upon full value of the entire work and/or materials delivered to the jobsite, which shall include the interest of Subcontractor.

10. The Subcontractor shall indemnify and hold harmless the Contractor, Owner, Architect or others from damages only to the extent such damages were caused by any negligent act or omission of the Subcontractor or anyone for whose acts the Subcontractor is liable.

Date

1/0/1900

CROWN FENCE
12118 Bloomfield Ave
Santa Fe Springs CA 90670



Since 1923

Phone: (562) 824-0729
Fax: (562) 864-2529
State Lic. 1315
DIR#1000008350

Q

PROJECT: Caltrans 08-0R1304 rte 62

TO: Prime Bidder

CONTACT: Joey Carso jcarso@crownfence.com

ATTENTION: ESTIMATOR

DATE: 7/27/2016

FAX:

Plans & Specs: Yes

Bondable: Yes

Installed: Yes

Rate: 0.86%

Tax Included: Yes

DBE/WBE: NO

Wage: Union Prevailing

Addendum: 1

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT
19	Remove Guardrail	76 LF	\$ 32.00	\$ 2,432.00
45	Temporary Fence (TYPE DESERT TORTOISE)	44700 LF	\$ 5.26	\$ 234,675.00
TOTAL				\$ 237,107.00

CLARIFICATIONS:

- Prime contractor to survey fence lines and stake/mark corner, end and gate post locations prior to installation
- Crown Fence willing to contract for just item #45 Desert Tortoise fence if contractor elects to do so
- Maintenance of Desert Tortoise fence is not included
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-
-

EXCLUSIONS:

- SWPPP / QC Plan / Safety Plan
- Engineering / Structural Calculations
- Electronic Shop / As Built Drawings
- Staking / Surveying / Pot-holing
- Location of Underground Utilities
- Permits / Licenses & Fees
- Traffic Control / Lane Closures
- Security / Flagsman
- Masonary Walls / Cross Fences
- Dust Control
- Grading / Clearing & Grubbing
- Fence / Gate Grounding
- Core Drilling / Saw Cutting
- Concrete other than post footings
- Patching / Restoration
- Removal of Spoils
- Maintenance
- Gate Closures / Knox Box
- Panic Hardware / Specialty Locks
- Inspection / Testing Fees
- Asbestos Training / Costs
- Bond Premium
- Builder's Risk Insurance
- Certified Welding
- Welding Inspection / Procedure

Crown will not be responsible for damage to underground facilities not properly and accurately located by those forces other than Crown's. For projects where some or all of the work is located within a site not serviced by Underground Service Alert, forces other than Crown's shall properly lay out, locate, and mark said facilities by any and all means available, and Crown assumes no responsibility therefore.